

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SRC Labs, LLC, et al.,

Plaintiffs,

v.

Microsoft Corporation,

Defendant.

No. 2:18-cv-00321-JLR

DECLARATION OF MARK A. GRIFFIN  
IN OPPOSITION TO DEFENDANT’S  
MOTION TO STAY CASE PENDING  
*INTER PARTES* REVIEW

Mark A. Griffin, under penalty of perjury under the laws of the State of Washington,  
declares that the following is true and correct:

1. I am a partner in the law firm of Keller Rohrbach L.L.P. and am one of the attorneys  
for the Plaintiffs in this case. I am a member of the bar of this Court and am competent to testify  
to the matters stated herein. I submit this Declaration in Opposition to Defendant’s Motion to Stay  
Case Pending *Inter Partes* Review.

2. Defendant Microsoft Corporation (“Microsoft”) has a wholly-owned subsidiary,  
Microsoft Technology Licensing, LLC (“MTL”), that owns by assignment all right, title, and  
interest in patents issued on inventions created by Microsoft inventors and files patent infringement  
lawsuits on behalf of Microsoft. In this District, for example, MTL sued Kyocera Corporation and

DECL. OF MARK A. GRIFFIN IN OPP’N TO DEF.’S MOT.  
TO STAY CASE PENDING INTER PARTES REVIEW  
(2:18-cv-00321-JLR) - 1

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1 Kyocera Communications, Inc. for patent infringement in 2015. Complaint, *Microsoft Tech.*  
 2 *Licensing, LLC v. Kyocera Corp.*, No. C15-346RAJ (W.D. Wash. Mar. 6, 2015). A true and correct  
 3 copy of the complaint from that case is attached hereto as Exhibit A.

4 3. Plaintiff Saint Regis Mohawk Tribe (“Tribe”) has partnered with Entrepreneurs  
 5 Roundtable Accelerator to create an Indigenous Business Accelerator program. Attached as  
 6 Exhibit B is a true and correct copy of a PowerPoint presentation showing the partnership between  
 7 the Tribe and Entrepreneurs Roundtable Accelerator to create an Indigenous Business Accelerator  
 8 program.

10 4. Attached as Exhibit C is a true and correct copy of an article by David Pridham,  
 11 *The Patent Litigation Lie*, Forbes (Apr. 13, 2017), [https://www.forbes.com/sites/davidpridham/](https://www.forbes.com/sites/davidpridham/2017/04/13/the-patent-litigation-lie/#1552744a7ea9)  
 12 [2017/04/13/the-patent-litigation-lie/#1552744a7ea9](https://www.forbes.com/sites/davidpridham/2017/04/13/the-patent-litigation-lie/#1552744a7ea9).

14 5. In *Microsoft Corp. v. i4i Limited Partnership*, 564 U.S. 91 (2011), the United States  
 15 Supreme Court unanimously affirmed a jury verdict finding that Microsoft willfully infringed the  
 16 patent of Canadian company i4i. This case was filed in 2007, and Microsoft was held liable for at  
 17 least \$290 million in damages.<sup>1</sup>

18 6. On August 10, 2011, The Sidney Morning Herald reported on the results of a patent  
 19 infringement lawsuit against Microsoft: “Richardson is the Australian inventor who took on  
 20 Microsoft and won. In April 2009, a United States court found the giant software corporation had  
 21 used his technology without his knowledge or permission and ordered Microsoft to pay  
 22 compensation of \$US388 million (then worth more than \$530 million). The award was one of the  
 23

25  
 26 <sup>1</sup> Charles Arthur, *Microsoft Loses Patent Battle with Canada’s i4i*, Guardian (June 10, 2011),  
<https://www.theguardian.com/technology/2011/jun/10/microsoft-canada-i4i-patent>.

1 highest in US patent history.”<sup>2</sup> The patent infringement lawsuit was first filed against Microsoft in  
2 2006.<sup>3</sup>

3 7. In *Microsoft Corp. v. Virnetx Inc.*, Case IPR2014-00401 (P.T.A.B. July 23, 2014),  
4 Microsoft attempted unsuccessfully to institute an *Inter Partes* Review (“IPR”) proceeding almost  
5 seven years after being served with a complaint involving the patent-in-use. Attached as Exhibit  
6 D is a true and correct copy of the Decision Denying Institution of *Inter Partes* Review from that  
7 case.  
8

9 8. Attached as Exhibit E is a true and correct copy of the Order Denying Motion to  
10 Stay, *Levine v. Boeing Co.*, No. 14-1991RSL (W.D. Wash. July 29, 2015), Dkt. # 65.

11 9. On August 24, 2018, Microsoft filed IPR No. IPR2018-01594 with the Patent Trial  
12 and Appeal Board (“PTAB”) of the United States Patent and Trademark Office (“USPTO”).  
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14 10. On August 30, 2018, Microsoft filed IPR No. IPR2018-01604 with the PTAB of  
15 the USPTO.

16 11. On September 5, 2018, Microsoft filed IPR No. IPR2018-01599 with the PTAB of  
17 the USPTO.

18 12. On September 5, 2018, Microsoft filed IPR No. IPR2018-01601 with the PTAB of  
19 the USPTO.

20 13. On September 5, 2018, Microsoft filed IPR No. IPR2018-01602 with the PTAB of  
21 the USPTO.

22 14. On September 5, 2018, Microsoft filed IPR No. IPR2018-01603 with the PTAB of  
23  
24

25 <sup>2</sup> Jane Cadzow, *The Beautiful Mind of the Aussie Who Beat Microsoft*, Sydney Morning Herald (Aug. 10, 2011),  
26 <https://www.smh.com.au/technology/the-beautiful-mind-of-the-aussie-who-beat-microsoft-20110810-1ilm6.html>.

<sup>3</sup> *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1299-1301 (Fed. Cir. 2011).

1 the USPTO.

2 15. On September 6, 2018, Microsoft filed IPR No. IPR2018-01605 with the PTAB of  
3 the USPTO.

4 16. On September 6, 2018, Microsoft filed IPR No. IPR2018-01606 with the PTAB of  
5 the USPTO.

6 17. On September 6, 2018, Microsoft filed IPR No. IPR2018-01607 with the PTAB of  
7 the USPTO.

8 18. On September 11, 2018, Microsoft filed IPR No. IPR2018-01600 with the PTAB  
9 of the USPTO. As of the date of this filing, 8 out of the 10 IPRs have been assigned to panels and  
10 been given Preliminary Response due dates.

11 19. The PTAB is located in Alexandria, Virginia.<sup>4</sup>

12 20. Plaintiffs filed their initial complaint against Microsoft in the United States District  
13 Court, Eastern District of Virginia, Alexandria Division, on October 18, 2017. Pls.' Original  
14 Compl. for Patent Infringement ("Original Complaint"), *SRC Labs, LLC v. Microsoft Corp.*, No.  
15 17-1172 (E.D. Va. Oct. 18, 2017), Dkt. # 1. This case was assigned to United States District Judge  
16 Liam O' Grady.

17 21. On December 1, 2017, Microsoft answered the Original Complaint, Dkt. # 20, and  
18 filed a Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404 (a), Dkt. # 21, asking that the case  
19 be transferred to the United States District Court for the Western District of Washington.

20 22. On January 17, 2018, the parties submitted a Joint Proposed Discovery Plan, Dkt.  
21 # 39, that included an "[a]n anticipated trial date" in June 2019 depending on the court's  
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26 <sup>4</sup> PTAB Contact Information, United States Patent and Trademark Office, <https://www.uspto.gov/about-us/organizational-offices/patent-trial-and-appeal-board/ptab-contact-information> (last visited Oct. 26, 2018).

1 availability. *Id.* at 3.

2 23. On February 16, 2018, Plaintiffs filed a Motion to Compel Defendant Microsoft  
3 Corporation to Produce Documents and Properly Respond to Interrogatories, Dkt. # 47.

4 24. On February 20, 2018, Judge O’Grady stayed discovery pending the Court’s order  
5 resolving the motion to transfer. Order, Dkt. # 49.

6 25. On February 26, 2018, Judge O’Grady granted Microsoft’s Motion to Transfer  
7 Venue Pursuant to 28 U.S.C. § 1404(a), ordering that this case be transferred to the Western  
8 District of Washington. Mem. Op. & Order, Dkt. # 50.

9 26. On April 30, 2018, this Court entered a Protective Order, Dkt. # 89.

10 27. On that same date, the Court denied Plaintiffs’ Motion to Compel in part and  
11 granted Plaintiffs’ Motion to Compel in part. Minute Entry, Dkt. # 88.

12 28. On May 22, 2018, this Court entered a scheduling order that set trial for November  
13 4, 2019. Minute Order Setting Trial Dates & Related Dates, Dkt. # 94.

14 29. On August 3, 2018, Plaintiffs filed a First Amended Complaint (“FAC”), Dkt. #  
15 103, and Microsoft answered the FAC on August 17, 2018, Dkt. # 110.

16 30. A number of significant discovery deadlines have passed. Plaintiffs served  
17 Microsoft with their Preliminary Infringement Contentions and Disclosure of Asserted Claims.  
18 Microsoft served its Preliminary Non-Infringement and Invalidity Contentions and Accompanying  
19 Document Production. Proposed Terms and Claim Elements for Construction and Preliminary  
20 Claims Charts have been prepared. Expert reports have been exchanged, and rebuttal expert reports  
21 have been exchanged. The deadline for completion of claim construction discovery (October 12,  
22 2018) has passed.

1           31. Plaintiffs have propounded four sets of Requests for Production and two sets of  
2 Interrogatories.

3           32. Microsoft has propounded one set of Requests for Production and one set of  
4 Interrogatories.

5           33. On September 17, 2018, Plaintiffs' counsel wrote defense counsel a letter about  
6 deficiencies in Microsoft's Patent Local Rule 121 disclosures and discovery responses, requesting  
7 that a meet and confer be scheduled to discuss these deficiencies.  
8

9           34. Beginning on September 19 through September 27, Plaintiffs attempted to schedule  
10 this meet and confer. Attached hereto as Exhibit F is an email string showing Plaintiffs attempts  
11 to schedule this meet and confer.  
12

13           35. With a letter dated October 1, 2018 that was transmitted to Plaintiffs' counsel on  
14 October 2, 2018, Microsoft responded to the substance of Plaintiffs' September 17, 2018 letter.

15           36. Three meet and confer telephonic conference calls have occurred in this case to  
16 discuss discovery deficiencies on October 2, 10, and 16, 2018.

17           37. The parties have produced 13,376 documents with 496,042 pages. The parties have  
18 also engaged in third party discovery from Intel.

19           38. Plaintiffs have received 803 documents with 31,036 pages from Intel and have  
20 reviewed its source code.  
21

22           39. Plaintiffs deposed Derek Chiou, a Microsoft employee, on October 12, 2018.

23           40. Plaintiffs deposed Henry Houh, one of Microsoft's experts on October 17, 2018.

24           41. Microsoft deposed Tarek El-Ghazawi, one of Plaintiffs' experts, on October 18,  
25 2018.  
26

1 42. Microsoft deposed Houman Homayoun, one of Plaintiffs' experts, on October 19,  
2 2018.

3 43. On October 25, 2018, Plaintiffs served Defendant and sent a Notice of Subpoena  
4 for Deposition of Microsoft employee Qi Lu to a process server for service.

5 44. The *Markman* hearing is scheduled to begin on December 20, 2018, and the  
6 Opening Claim Construction Briefs are due on November 2, 2018. Stipulated Mot. & Order to  
7 Modify Claim Construction Schedule, Dkt. # 113. The Joint Claim Chart and Prehearing Statement  
8 is due on October 31, 2018. Stipulated Mot. & Order to Modify Claim Construction Schedule,  
9 Dkt. # 122.  
10

11 45. On July 9, 2018, Microsoft served its preliminary invalidity contentions. These  
12 contentions seek to invalidate Plaintiffs' patents on grounds based on Patentability, 35 U.S.C. §  
13 101, Lack of Enablement and Written Description, *id.* § 112(a), and Indefiniteness, *id.* § 112(b).  
14

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed this 29th day of October, 2018 at Seattle, Washington.

17  
18 s/Mark A. Griffin

19 Mark A. Griffin, WSBA #16296  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of October, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

s/Mark A. Griffin

Mark A. Griffin, WSBA #16296